

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

ORDER

JEFFREY PESTONE,

96-CR-01166

Defendant.

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PHILIP M. HALPERN, United States District Judge:

On or about June 20, 2023, Jeffrey Pestone filed a letter requesting relief from the restitution and garnishment orders previously entered against him due to financial hardship. (Doc. 42). The Court previously, on May 3, 2023, entered an Opinion and Order which denied Mr. Pestone's request to enjoin the Government's enforcement of the restitution judgment and compel the return of funds recovered through the Treasury Offset Program ("TOP") on the grounds that the Government's enforcement of the judgment was proper. (Doc. 40).

The Court assumes the parties' familiarity with the background and history of this matter as laid out in the May 3rd Opinion and Order.

As noted by the Government in its response letter (Doc. 46), it is not at all clear that this Court has jurisdiction over a request for a TOP reduction or removal based upon a claim of hardship alone. *See* 5 U.S.C. § 701(a)(2); *Heckler v. Chaney*, 470 U.S. 821, 830 (1985) ("[Judicial] review is not to be had if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion."). Claims of financial hardship are "not an appropriate line of inquiry in this matter, statutorily or otherwise. . . . No inquiry into Defendant's individual needs is provided for by statute." *United States v.*

Weissenbach, No. 08-CR-00172, 2010 WL 2246177, at *2 (W.D.N.C. June 2, 2010). Moreover, and in any event, Mr. Pestone's claim of financial hardship is unsupported by credible evidence.¹

Accordingly, the instant application is DENIED.

The court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is respectfully requested to mail a copy of this Order to Jeffrey Pestone, 980 Broadway, Suite 608, Thornwood, N.Y. 10594.

SO ORDERED.

Dated: White Plains, New York
November 17, 2023


Philip M. Halpern
United States District Judge

¹ The only submissions supporting Mr. Pestone's claim of financial hardship are his *in forma pauperis* application which was filed on March 10, 2023 in connection with his earlier request to enjoin the Government's enforcement of the restitution judgment and compel the return of funds recovered through the TOP (Doc. 34), and the conclusory assertions in his instant application (Doc. 42).